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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,290	10/19/2005	Tracey A. Cavato	38-21(52221)B	5924

45607 7590 02/19/2009  
HOWREY LLP  
C/O IP DOCKETING DEPARTMENT  
2941 FAIRVIEW PARK DRIVE SUITE 200  
FALLS CHURCH, VA 22042

EXAMINER
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KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
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1638

MAIL DATE	DELIVERY MODE
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02/19/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



## UNITED STATES DEPARTMENT OF COMMERCE

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10523290	10/19/2005	CAVATO ET AL.	38-21(52221)B

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FALLS CHURCH, VA 22042

## EXAMINER

Anne R.. Kubelik

ART UNIT	PAPER
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20090209

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

## Attachments:

1. PTO 892
2. Grant et al (2003, J. Dairy Sci. 86:1707-1715)
3. Mitchell (May 2002, Yield Benefit of Corn event Mon 863, In: Faculty Paper Series, Department of Agricultural Economics, Texas A&M University)
4. Request for Information

This requirement is subject to the provisions of 37 CFR §§ 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR § 1.56. Where the applicant does not have or cannot readily obtain an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

/Anne R. Kubelik/  
Primary Examiner, Art Unit 1638

*Request for Information under 37 CFR § 1.105*

Applicant and the assignee of this application are required under 37 CFR § 1.105 to provide the following information that the examiner has determined is reasonably necessary to the examination of this application.

This request is being made for the following reasons:

US Patent 6,551,962, inventors Pershing, Sachs and Sanders, filed from provisional applications filed 6 October 2000, discloses corn event MON863 (column 24, line 30, to column 25, line 7) <sup>was</sup> cited in an art rejection in an art rejection in the Office action mailed 27 December 2008 in the case. In the response filed 11 November 2008, Applicant argued that MON863 was not commercially available at the time of 962's filing.

However, several publications suggest that corn event MON863 was available prior to the filing date of the instant application, 29 July 2002.

Mitchell (May 2002, Yield Benefit of Corn event Mon 863, In: Faculty Paper Series, Department of Agricultural Economics, Texas A&M University) discusses field research done on corn event MON863 in 1999 and 2000 (pg 4, paragraph 1; Table 3).

Grant et al (2003, J. Dairy Sci. 86:1707-1715) discusses feeding experiment research done prior to the filing of the instant application, as evidenced by the Received date of 21 July 2002 for the paper (pg 1707, very bottom of left column).

Thus, it appears that corn event MON863 was available prior to the filing of the instant application.

The requested information is required to make a meaningful and complete search of the prior art.

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In response to this requirement, please provide answers to each of the following interrogatories eliciting factual information:

(i) Prior to the effective filing date of the instant application, was corn event MON863 publically available in any form, commercially or otherwise? Under what conditions was corn event MON863 disclosed or made publicly available and from when to when?

(ii) Under what conditions did Mitchell and Grant et al receive corn event MON863, if known to Applicant?

If Applicant views any or all of the above requested information as a Trade Secret, then Applicant should follow the guidance of MPEP § 724.02 when submitting the requested information.

In responding to those requirements that require copies of documents, where the document is a bound text or a single article over 50 pages, the requirement may be met by providing copies of those pages that provide the particular subject matter indicated in the requirement, or where such subject matter is not indicated, the subject matter found in applicant's disclosure. Please indicate where the relevant information can be found.

This requirement is subject to the provisions of 37 CFR §§ 1.134, 1.135 and 1.136 and has a shortened statutory period of 2 months. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

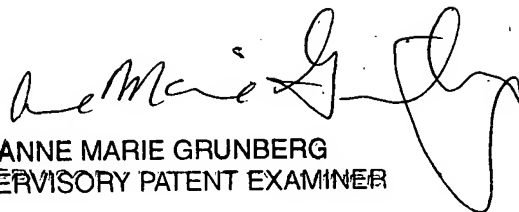
The applicant is reminded that the reply to this requirement must be made with candor and good faith under 37 CFR § 1.56. Where<sup>t</sup> the applicant does not have or cannot readily obtain

Art Unit: 1638

an item of required information, a statement that the item is unknown or cannot be readily obtained may be accepted as a complete reply to the requirement for that item.

/Anne R. Kubelik/

Primary Examiner, Art Unit 1638

  
ANNE MARIE GRUNBERG  
SUPERVISORY PATENT EXAMINER